

APPEAL NO. 040988
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable occupational disease; that the date of injury pursuant to Section 408.007 was _____; that the claimant timely notified the appellant (self-insured) of her injury; that the claimant had disability from October 24, 2002, through September 24, 2003; and that the self-insured waived the right to contest compensability of the claimed injury by not timely contesting it. The self-insured appeals the hearing officer's determinations on all of the disputed issues, contending that no evidence supports those determinations and that they are against the great weight and preponderance of the evidence. The claimant asserts that the evidence supports the hearing officer's determinations and requests affirmance.

DECISION

Affirmed.

An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant claimed that she sustained a repetitive trauma injury from performing her work activities, that she had disability as a result of her injury, and that she timely reported her injury to the self-insured. The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36), that she had disability as defined by Section 401.011(16), and that she timely notified the self-insured of her injury pursuant to Section 409.001(a). The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 408.007. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations in favor of the claimant on the issues of compensable occupational disease, date of injury, timely notice of injury, and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We further conclude that the hearing officer's determination that the self-insured waived the right to contest compensability of the claimed injury by not timely contesting the injury is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. Section 409.021; Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Robert W. Potts
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge